IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6633 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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S T SHUKLA - Petitioner(s)
Versus
AHMEDABAD MUNICIPAL CORPN THRO. MUNICIPAL COMMISSIONER & 1 - Respondent(s)

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Appearance :
MR KV SHELAT for Petitioner(s) : 1,
MR.PRASHANT DESAI for Respondent(s) : 1,
MR ANIP A GANDHI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 03/10/2007

ORAL JUDGMENT

Rule. Mr.Prashant Desai and Mr.Anip A. Gandhi, learned advocates waive service of rule on behalf of respondent no.1 and 2 respectively. With the consent

of the parties the matter is taken up for final disposal. The present petition is filed praying that,

> “The Hon'ble Court be pleased to grant relief/s as prayed in the Special Civil Application No. __ of 2007.”

2. The case of the petitioner is that he is the heir of Dhirubhai M. Tripathi, who died on 18.09.1998. Said Dhirubhai Tripathi had no son and had only daughter, named Kalaben. Smt.Kalaben inherited tenancy right on expiry of her mother (widow of Dhirubhai Tripathi) named, Madhuben, who died on 23.11.2002. Present petitioner is the son of Smt.Kalaben, who in turn, inherited the tenancy rights.

In the additional affidavit filed by the present petitioner, it is mentioned that the petitioner is the proprietor of Vijay Agro Chemicals. It is also stated that the petitioner's grand father, Shri Dhirubhai M. Tripathi was carrying on the business in the name and style of 'Vijay Agro Chemicals”, that Ahmedabad Municipal Corporation had issued notice

vide communication dated 8th July 1987, that as Shri Dhirubhai Tripathi had no son the petitioner was helping him in the business being grand son (daughter's son), that after the death of the grand father (Dhirubhai Tripathi), the petitioner was paying rent to the respondent-trust. The rent receipts for the period till the premises were demolished for giving way to widening of the road in April 2007 are produced, that all through out Municipal Tax was paid by the petitioner by account payee cheques from his account with Social Cooperative Bank Limited. The petitioner has also produced copies of tax bills, Bank statements and certificate issued by the Bank at Annexure 'I', that the grand father of the petitioner was sitting tenant in the premises bearing Census No.710 of Jamalpur Ward for the last about 40 years.

The petitioner has averred in para 4 of the additional affidavit that the petitioner's mother, Smt.Kalaben, his married sister-Archana and his brother Devang have filed an affidavit stating that they have no objection, if compensation in respect of

tenanted premises is received by the petitioner.

3. The Corporation is not contesting the matter as the Corporation has no dispute on amount of compensation, and has nothing to do with the relationship of respondent no.2 and the petitioner as land and tenant.

An additional affidavit is filed on behalf of respondent no.2 affirmed by one Shriyakbhai Sheth, son of late Shri Arvind Panalal, Managing Trustee of respondent no.2. Respondent no.2 does not admit the petitioner as its tenant. It is the case of respondent no.2 that the trust is entitled to receive full amount of compensation from the Corporation. The learned advocate appearing for respondent no.2 emphatically invited attention of the Court to the averments made in para 6 of the additional affidavit filed on behalf of respondent no.2 affirmed on 3rd July 2007. The averments read as under:

> “The respondent no.2 trust further state that the fact stated by the petitioner in

their rejoinder that Dhirubhai was expired on 18.09.1988 and at that time, the petitioner no.5-Sanjiv T. Shukla was helping him and doing business with late Dhirubhai is not known to the trust and therefore, it is not admitted by the respondent no.2 trust. Even on today also the Municipal Tax bill is on the name of Dhirubhai Manilal and in that name of the occupier is also stated as Dhirubhai Manilal only. The latest Municipal tax bill No.2226 dated 27.06.2007 is annexed herewith by the Trust as Annexure 'A'. The petitioner no.5-Sanjiv T. Shukla cannot claim as a tenant of the respondent no.2 trust only on the loose sentence made by him in the rejoinder even without producing any document with **that effect or the consent letter from the legal heirs of late Dhirubhai Manilal**. All these facts have to be established by the petitioner no.5 before the competent court as per the provisions of the Bombay Rent Act." (emphasis supplied)

The question of consent letter from the legal heirs of late Dhirubhai Manilal is concerned it is stated in the additional affidavit that the petitioner's mother, Smt.Kalaben, his married sister-Archana and his brother Devang have filed an affidavit to the effect that they have no objection, if compensation in respect of tenanted premises is received by the petitioner.

4. Respondent no.2 has also stated in para 7 as under:

> “I further state that the case of the petitioners are different from the group matter decided by this Hon'ble Court by its common order and judgement dated 18-21/-4/2—6. All the appellants in that group matters have filed respective civil suits before the respective civil court and in that suits the question of 'landlord and tenants' was not involved or (sic.) not decided by the respective civil court

> therefore, in respectful submission of the respondent no.2 trust that the common judgement in the group matters dated 18-21/04/2006 is not applicable to the present petition."

Learned advocate for respondent no.2 also placed reliance on the averments made in para 8 of the additional affidavit in reply. The averments in para 8 read as under:

> ".. .. Dhirubhai Manilal as a tenant is to be considered, then also Dhirubhai Manilal is the tenant of only 18.18 sq. mtrs space out of total area of the property, i.e. 243.11 sq. mtrs. So, the respondent no.2-trust further contended that by calculating Rs.7,000/- per sq. mtr. Only sum of Rs.1,27,260/- can be claimed by Dhirubhai Manilal but the remaining amount of Rs.18,38,694/- may be given to the Trust. The respondent no.2-trust further clarify that the trust has its priority right of getting compensation from the Ahmedabad Municipal Corporation as the trust is the owner of the property in question and the petitioners cannot claim the compensation of the property."

5. The contentions of respondent no.2 are not sustainable in light of the fact that possession of the property is already taken over by respondent no.1-Corporation and road is already laid at the site, now there is no surviving property, therefore, to suggest the petitioner to go to the rent court for getting declaration that he has right over the tenanted premises is nothing but a misdirected suggestion. In view of the fact that tax bills are produced by the petitioner, payment of which is made by the petitioner from his Bank Account with the Social Cooperative Bank Limited and more particularly, in light of the affidavits filed by the other surviving heirs of late Shri Dhirubhai Tripathi, the petitioner, as the heir of deceased-Dhirubhai Tripathi is the tenant of the rented premises.

6. In view of the aforesaid discussion, it is held that the petitioner is entitled to receive compensation as tenant of the premises in question.

7. Learned advocate Mr.Shelat relied upon the

following decisions:

(i) In the matter of **Mangatram and others Vs. State of Haryana**, reported in (1996) 8 SCC 664;

(ii) In the matter of **Union of India, through Secretary, Ministry of Home Affairs and others Vs. A. Ajit Singh, s/o S. Chet Singh**, reported in (1997) 6 SCC 50; and

(iii) In the matter of **Brij Behari Sahai (dead) through Lrs and others Vs. State of U.P.**, reported in (2004) 1 SCC 641.

Learned advocate relied upon these decisions of the Hon'ble the Apex Court to contend that the amount of compensation is required to be disbursed between the tenant and landlord taking into consideration the length of the tenancy. He submitted that in the case of **Mangatram and others** [(1996) 8 SCC 664] (supra) the tenancy was of 40 years. The Hon'ble the Apex Court ordered disbursement of amount in the ratio of 75 : 25 between the tenant and the landlord

respectively. Similarly, in the case of **Secretary, Ministry of Home Affairs** [(1997) 6 SCC 50] (supra) the length of the tenancy was 18 years and the amount of compensation was disbursed in the ratio of 60 : 40 between the tenant and landlord. The learned advocate for the petitioner submitted that in the present case the tenancy is of about 60 years; therefore the ratio as laid down by the Hon'ble the Apex Court in the matter of **Mangatram and others** [(1996) 8 SCC 664] (supra) can safely be followed taking into consideration the ratio laid down by the Hon'ble the Apex Court. It is directed that the compensation be disbursed between the petitioner and respondent no.2 in the ratio of 75 : 25. The petition is accordingly allowed. Rule is made absolute with no order as to cost.

(RAVI R. TRIPATHI, J.)

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